

# WASHINGTON STATE GAMBLING COMMISSION

\*\*\*\*\*

## MINUTES COMMISSION MEETING THURSDAY, OCTOBER 9, 1997

**Chairman Ludwig** called the meeting to order at 1:30 p.m. at the Best Western Icicle Inn, Leavenworth, Washington.

### MEMBERS PRESENT:

**CURTIS LUDWIG, Chairman;**  
**EDWARD HEAVEY; MARSHALL FORREST and**  
**PATRICIA L. HERBOLD; and**  
**Ex Officio Member SENATOR RAY SCHOW**

### OTHERS PRESENT:

**Support;**

**BEN BISHOP, Executive Director;**  
**CARRIE TELLEFSON, Division Director, Policy, Planning and**  
**SHERRI WINSLOW, Division Director, Field Operations;**  
**CALLY CASS-HEALY, Division Director, Licensing Operations**  
**SUSAN GREEN, Executive Assistant.**

**Chairman Ludwig** introduced the Washington State Gambling Commission (WSGC) staff and Commission members present. He announced that Sharon Tolton, former Assistant Director of Special Operations, had taken a new position as Deputy Director of the Washington State Criminal Justice Training Commission, but is attending today's meeting as a guest. He noted that Ms. Tellefson has a new title as Director of Policy, Planning, and Support and that this is Ben Bishop's first meeting as Executive Director.

He said he is very pleased that Senator Ray Schow of Federal Way now serves on the Commission as an ex officio member. He chairs the Senate Commerce and Labor Committee in the Senate – the Committee that most gambling-related legislation goes through. He said that Commissioner McLaughlin could not be at the meeting this time.

### LICENSE APPROVALS

#### NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS

**Commissioner Heavey** moved that the Commission approve the new licenses, changes, withdrawals, and tribal certifications listed on pages 1 through 21. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with four aye votes.*

### REVIEW OF FRIDAY'S AGENDA

**Ms. Tellefson** said tomorrow there will be a staff report by Assistant Director Winslow on the card room pilot test update. This will be a review of the house banked regulation and internal control program. For final action will be two sets of rules, the gambling service supplier rules and the house banked card game rules. Quite a bit of testimony is expected on that package. For discussion there are seven rules and two petitions, one regarding raffles, the other regarding merchandise prizes for pull tabs and three licensee fee increase rules. For discussion and possible filing, there are a couple of public card room employee rules, house keeping rules that go with the house banked card room program and three rules regarding bingo gift certificates and merchandise receipting. They have had a request from Freddie's through their attorney, Bob Tull, to add Freddie's card room contract to the agenda tomorrow under other business. This would be presuming that the house banked card room rules passed tomorrow. The staff is asking that it be added to the agenda under "Other Business."

**Commissioner Herbold** wondered what the nature of business was under Freddie's card room contract. **Ms.**

**Tellefson** said that is under the house banked card room rules. They are asking to come before the Commission for review of their program and may be asking for early implementation. The staff will be making their own response at that time. The rule will be up for final action tomorrow and will become effective 30 days after filing, which would be around the end of November. **Commissioner Herbold** asked if that would mean Freddie's card room contract would go forward prior to the rule going into effect. **Ms. Tellefson** said it would depend on which recommendation the Commission would take at the time, but the staff would be recommending that they wait until the rule becomes effective.

## **QUALIFICATION REVIEWS**

### **EDUCATIONAL INSTITUTE FOR RURAL FAMILIES, Pasco**

**Ms. Cass-Healy** said this organization was formed in 1974, and their mission is to establish and operate programs to improve the educational and living conditions of the migratory seasonal and low income families in Benton and Franklin Counties. The organization provides the following program services: child care, preschool, nutrition services, health services including immunizations and well child screening, transportation for children to and from their centers, and parent involvement. The organization met its required combined net return percentage of 10 percent for its Class "I" bingo license by achieving an 18.2 percent net return. The organization did have an overall deficiency of expenses over revenue in the amount of \$21,000 for the year, but according to Karen Foster, office manager, the organization did have cash available to fund their program services. **Ms. Foster** said the organization has made cutbacks in all areas including services and personnel. For 1997, the organization has been forced to reduce services provided to its health programs, including the elimination of a full time nurse position. More than 60 percent of the organization's gambling proceeds were spent for providing program services, and supporting services expenses were less than 35 percent of functional expenses. They did not have excessive reserves. The staff recommends this organization be approved as a charitable organization authorized to conduct gambling activities in the state of Washington.

**Chairman Ludwig** noted that there is no one present from this organization.

**Commissioner Heavey** moved that the Educational Institute for Rural Families be approved as a charitable organization authorized to conduct gambling in the state of Washington. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

### **YAKIMA GREENWAY FOUNDATION, Yakima**

**Chairman Ludwig** noted that this organization had been on the agenda in August at the meeting in Wenatchee and asked if it had been approved at that time. **Ms. Cass-Healy** said their recommendation had been for conditional approval and then as they brought up the report today they would cover that issue. Today the staff is recommending unconditional approval. **Chairman Ludwig** asked if they had met that minimum requirement that they had not met two months ago. **Ms. Cass-Healy** said that they met it just fine if they are given an exemption for in-kind contributions that are non-cash services. **Chairman Ludwig** said he recalled that they had some \$300,000 almost \$400,000 in in-kind contributions. **Ms. Cass-Healy** said that was correct and that since they are non-labor intensive, those contributions increase their revenues so much that it skews the program services expense. The staff thought it was more than reasonable to take those out for that calculation.

**Ms. Cass-Healy** said that the Foundation's purpose is to conserve, enhance and maintain the Yakima Greenway as a continuing living resource for future generations. The Foundation owns and maintains 10 miles of paved pathway, three parks, two fishing lakes and four river access landings plus protected and natural areas. Greenway facilities are open and free to the public all year. Ongoing maintenance and operations are funded completely through the efforts of the Foundation through their memberships, memorial and honorary donations, special events, reservation fees for facilities, annual giving campaigns, capital drives, and gambling activities. The Foundation's major fundraising events include the gap-to-gap relay race, "A Case of the Blues" and "All That Jazz" concerts, the great Yakima duck race, the great Yakima earth day celebration, and "Something for everyone," which is a series of free concerts at the Robertson Amphitheater. The Foundation recently created an

education program known as the Greenway Eagle. The program's goals are to promote skills and attitudes that will enhance knowledge and appreciation of the natural environment for Yakima area students. It is hoped that the program will reduce future vandalism by instilling in young citizens a sense of ownership and pride in the Greenway. Yakima Greenway Foundation met its required combined net return percentage of 12 percent for its Class "J" bingo license by achieving 13.8 percent net return. Supporting services expenses were less than 35 percent of the functional expenses and the organization did not have excessive reserves. As was discussed, they did meet their requirements, given the exemption that was allowed for the 60 percent of program services. The staff recommends approval of this organization as a charitable organization and authorized to conduct gambling activities in the state of Washington.

**Commissioner Herbold** moved that the Yakima Greenway Foundation be approved as a charitable organization authorized to conduct gambling activities in the state of Washington; **Commissioner Forrest** seconded the motion.

**Ms. Cass-Healy** pointed out that Cece Vogt, the executive director and Jim Sackman, the bingo manager, are present to answer questions, if any. There were no questions.

*Vote taken; motion carried with four aye votes.*

## **BIG BROTHERS/BIG SISTERS of SPOKANE COUNTY**

**Ms. Cass-Healy** said this organization was formed in 1965. Their mission is to provide guidance, aid and companionship to children from single parent homes. The organization provides adult role models for children, ages six to sixteen. During 1996, 456 adults contacted the organization seeking information on how to become a big brother or big sister. The organization successfully conducted its second recruitment challenge campaign, which is an effort designed to increase the number of new volunteers and reduce the amount of time that a child remains on the waiting list for a big brother or sister. During 1996, the organization received 112 applications from parents seeking to involve their children in the programs. The number of children matched reached 102. The success rate for Big Brother matches was 71 percent during 1996 and for Big Sisters it was 82 percent. Additionally, the organization staffed and conducted 20 group outings that involved not only current program participants, but also potential little brothers and sisters and their families. They also initiated a school-based mentoring program in Deer Park. In this effort 16 high school students serving as reading tutors are matched with at-risk elementary students for one semester. The mentoring program continues into its second year of operation.

Big Brothers and Big Sisters of Spokane County satisfied the required combined net return percentage of 16 percent as a holder of Class "M" bingo license by achieving a 16.9 percent net return. Additionally, the organization was in compliance by ensuring that supporting services expenses did not exceed 35 percent of functional expenses and that more than 60 percent of the organization's gambling proceeds were used for program services. They did not accumulate excessive reserves. The staff recommends that Big Brothers and Big Sisters of Spokane County be approved as a charitable organization authorized to conduct gambling activities in the state of Washington.

**Chairman Ludwig** noted that Don Kaufman, executive director, was in the audience and asked if he had anything he wanted to add. Chairman Ludwig said he noticed they needed 10 more Big Brothers and Sisters this past year.

**Mr. Kaufman** said that yes, they needed that many to balance the incoming, but that didn't take care of the waiting list. He said they always had a need there. He mentioned that their school-based mentoring program now involves seven schools in the county, one in Cheney, one in Deer Park one in District 81. They also will have 50 volunteers in place before the end of the year in that program.

**Commissioner Heavey** moved to approve this organization as a charitable organization authorized to conduct gambling in the state of Washington; **Commissioner Herbold** seconded the motion.

*Vote taken; motion carried with four aye votes.*

## DEFAULT ORDER

**Hung V. Le, Renton**

**Chairman Ludwig** said this item was being held over until the next Commission meeting because the process could not take place in time to be on today's agenda.

## OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC

### **SATELLITE BINGO**

**Greg Murray**, President of the Washington Charitable and Civic Gaming Association, said that at the last legislative session they were involved in supporting a bill that would allow the charitable licensed bingo games in the state of Washington to conduct a joint game that would allow their patrons to play for a combined prize pool. The bill passed both houses of the Legislature and went to the Governor but that section of the bill was vetoed. They have had discussions with the Governor's staff, who indicated the Governor would consider supporting this bill, particularly because there is an opportunity that this may be utilized by the tribes if it's not undertaken by the charitable organizations and supported by the state. He said he was present at today's meeting to ask the Commission to consider endorsing this effort to the Governor and the Legislature. He feels it would be very beneficial to the charities and does not constitute an expansion of gambling. It would allow them to provide a larger prize pool for the players, but it basically does not bring any new money or any new games into the state. They would be able to provide the commissioners with any additional information they need. He had a conversation with Director Bishop and he had indicated that he would lend his support this year as he had done last year. He asked the Commission to indicate their support of this measure to Governor Locke.

**Chairman Ludwig** called for any questions or discussion.

**Commissioner Forrest** asked if the Commission supported the bill last session. **Mr. Murray** said that Director Miller did support it and did send letters in support of the bill. **Commissioner Forrest** then asked if the Commission had taken any official action on it. **Ms. Tellefson** said that was done by the Director and was not done on behalf of the Commission.

**Chairman Ludwig** said to Mr. Murray that this may be something they would just think about between now and the next meeting because they have a fair amount of time before the legislative session. He felt personally that the Commission just might mull it over and discuss it again. **Mr. Murray** said his group comes before the Commission today to ask for their support because they are trying to work with the Governor's Office and to lay the groundwork to make sure that there is support and that everything is lined up prior to the beginning of the session.

**Chairman Ludwig** asked whose bill it was with that part vetoed. **John Beadle**, Seattle Junior Hockey, said it was SB 5034. He said initially it was their bill, but it was consolidated into another bill. **Chairman Ludwig** asked who sponsored the bill for them. **Mr. Beadle** said it was Senator Schow.

**Senator Schow** said he wasn't sure why the Governor vetoed it, but he thought it may have been that he didn't have a real opportunity to analyze what they were attempting to do. He thinks that the legislators were pretty much in agreement that it was something that would be of great benefit to charitable organizations.

**Commissioner Forrest** said most charitable organizations are under a lot of pressure and he is in favor of helping them. He suggested that they should postpone the discussion until next month. **Chairman Ludwig** said he agreed that the commissioners should give it a final look in November. **Mr. Murray** said he had planned to be at the next meeting and would call the staff to remind them of this issue for the next meeting.

## **CARD ROOM CONTRACT**

## **Timmen's Yellow Rose Card Room, La Center**

**Ms. Tellefson** said they are asking for two additional tables, a rake at all of their tables for a total of seven tables, and one jackpot scheme. They have submitted their deposit and staff recommends approval of this contract.

**Chairman Ludwig** asked if the representatives of Timmen's Yellow Rose Card Room would like to speak. They responded that they hoped for approval.

**Commissioner Forrest** moved that the contract be approved. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.* **Chairman Ludwig** said the contract is being circulated for signature.

## **COMMISSION MEETINGS/LENGTH AND FREQUENCY**

**Chairman Ludwig** said that he and Commissioner Herbold had been discussing the length of the meetings and asked her to open the topic for discussion.

**Commissioner Herbold** said that since she began serving on the Commission, she has spoken with other commissioners and the staff regarding the amount of time it takes the staff to prepare for them. She recalled the heavy-duty meetings over the last few months where there was a lot of material to cover and a lot of rule changes that involved longer meeting times. She said she thought that might change after they get some of the house banking contracts into effect, which will be coming up in the next six months or so. She said things should settle down a little bit and this may be an appropriate time to discuss whether they should think about changing their meeting schedule. One option would be to try to consolidate what they currently do on Thursday and Friday into one day. Another suggestion, which she likes even better, is that they meet every other month for two days. She said Ms. Tellefson has provided the Commission with a memo that shows some statistics on the frequency of other board and commission meetings in the state of Washington. She said she thinks it is important for the licensees to be given an opportunity to discuss their views on this idea with the commissioners. For example, they may think monthly meetings are critical or they may think every other month would be sufficient. It is recognized that there will be times when critical topics are under consideration that may require an additional meeting from time to time.

**Chairman Ludwig** said he wanted to bring this subject up in an open meeting because there are a great many of the licensees and others who attend frequently and also come to the study group meetings. He encouraged licensees to provide input on this issue. In order to meet deadlines for the monthly meetings, the staff is spending a lot of time preparing materials. There is another consideration that is important for the immediate future, and that is the house banked card game program, for which contracts need to be approved by the Commission in order for the card rooms to begin operating. Based on the last two or three months, it would have been tough to have less meeting time and they don't want to make changes that would prejudice that. This topic will be addressed at the November meeting. The schedule for 1998 has already been set and this must be taken into consideration so that if cancellations are necessary there will be enough time to do that. Special meetings can be called if they give proper notice. The statute only requires that the Commission meet four times per year and they have been meeting eleven times per year. They might be able to affect some economy and some staff time very favorably if the right changes are made.

**Commissioner Heavey** said he liked the idea of every other month meetings.

**John Beadle** asked if having fewer meetings would affect how long it takes for a rule to pass.

**Chairman Ludwig** said his initial understanding of that is that it requires a certain amount of time rather than a certain amount of meetings, but they will have to check this out with their attorney before making that decision. **Ms. Tellefson** said the requirement is that, once the rule is published in the state register, there has to be at least 20 days before final action can be taken on a rule in order for the public to comment. The Commission, just by policy, has had a rule up for three times, which usually covers the 20 day period with plenty of extra time. They

could choose to have a rule on the agenda for two meetings for discussion or they could choose to carry it over for three times. Either way, they would probably be fine with the state requirements. **Chairman Ludwig** asked if that means the Commission could file a rule today and take final action on it in December if they were having a meeting in December. **Ms. Tellefson** said yes.

**Commissioner Heavey** asked if there were a rule that governs the Commission's own procedure in terms of hearings on proposals. **Ms. Tellefson** said they did not and that has been the tradition as long as she has been with the Commission. **Director Bishop** said it was purely a timing issue. The Commission instructs the staff to file rules, and the earliest they can get to the code reviser's office would be next week. Then they will meet a publish date that they have already established. The next published date right now is October 22, and it has to be published for at least 20 days before it can be acted on and so that runs them into the third month. **Commissioner Heavey** asked if there is a certain day of the month that the code reviser publishes. **Director Bishop** said they do it twice a month and they tell them when those dates are. **Chairman Ludwig** asked if a meeting every other month would have an adverse effect on rulemaking or timeliness at all. **Ms. Tellefson** said it would not have an adverse effect from a procedural standpoint and from the person who does the processing it would probably help in terms of being better prepared. They just have to make sure to make themselves available to the licensees for comment in between.

**Chairman Ludwig** said that if they took this action, there would be one less opportunity for public comment, but still the same amount of time. **Ms. Tellefson** said if that is something that the Commission wants to do, they could choose to continue to keep rules on the agenda for three periods. It would just be a longer rule-making process.

**Commissioner Heavey** said they could do that on a case-by-case basis if there were no urgency, for example, or if the affected parties, the licensees, were not anxious to have it done. In the case of house banking, they are anxious to have that concluded. He asked about the occasions when somebody said they have to act within a certain period of time. **Ms. Tellefson** said they file a petition within 60 days of receiving it – that is one occasion. They should not fall into a situation where they receive a petition and don't have a meeting scheduled within 60 days. **Director Bishop** said that he thought they do not have to file it, but action has to be taken. The Commission could deny or instruct the staff to file it, which is taking action.

**Commissioner Heavey** wondered if they had to adopt a rule within a specific time frame. **Ms. Tellefson** said action had to be taken on a rule within 180 days. Staff would have to re-file it if the Commission had not adopted it or denied taking action. She said she believed that there are time restrictions regarding when the appellant has to file a petition for review and that's 30 days after receiving the initial order from the administrative law judge. She said she could look it up to find out whether or not a hearing has to be held within a certain period of time or whether it is just at the next public meeting.

**Commissioner Heavey** said he thought that it was done by a hearing examiner in any event. **Ms. Tellefson** said the initial hearing is done by an administrative law judge. She said she thought the Chairman was asking about petitions for review from an administrative law judge's order.

**Director Bishop** said that, in the event the director exercises summary suspensions, there are now regulations that afford the licensee a brief adjudicative hearing to examine whether it was something that required a summary action. Those were taken care of either by phone or the Commission appointed a commissioner to hear the subject or appointed a law judge. In that case, he was fairly certain it is seven days. **Commissioner Heavey** said that whether they meet once a month or six times a year would not affect that at all. **Director Bishop** said it would go into the normal administrative system after the hearing regarding whether the director had acted correctly or not.

**Chairman Ludwig** wanted to know if, in the case of a house banked card room application or proposal, would the Commission have to consider and approve that in a regular meeting as opposed to a conference call. **Ms. Tellefson** said she thought he could determine that. The staff's version of the rule that is before them includes that these contracts come before them at a regularly scheduled public meeting, but that could be amended. That's something that the staff has chosen to take to the Commission at a policy level so that they would have a

chance to see the organization, review their internal controls, and hear the staff's position as far as their preparedness to go forward. That is not required under the statute that was changed during the last legislative session.

**Chairman Ludwig** asked about open meeting rules. He wondered if something like that could be accomplished other than in a regularly scheduled publicized meeting or a special publicized meeting. **Ms. Tellefson** said the intent was to have it at a public meeting. She said it could be at a special meeting that was scheduled in advance with public notice as well. If they wanted to take that provision out of the rule, it is something that either the director or the chairman or the chairman's designee could do. She would have to look at the Open Public Meetings Act as far as the Commission taking action in private. **Chairman Ludwig** did not think that was a critical issue, but it is one of many that they might be thinking about.

**Director Bishop** said the rule itself requires that it be submitted to the Commission for approval. They will have to get clarification from Jon McCoy, but his interpretation of that would be that they could mail the Commission the contract and they could review it.

**Chairman Ludwig** asked for further comment.

**Don Kaufman** said that with 11 meetings, there are 11 opportunities to meet in various locations around the state, and if those opportunities are lessened, that means some licensees are not going to have the opportunity to attend meetings. **Chairman Ludwig** said that the meetings are held around the state to provide access for licensees and if they cut them down from 11 to 6 that access is going to be affected somewhat. They would still have to try very hard to provide some balance to all areas of the state. He thought that with the right scheduling, they could move around appropriately but not as often.

**Ms. Tellefson** said that she wanted to respond to an earlier question raised either by Commissioner Heavey or perhaps Chairman Ludwig. On petitions for review from initial orders, the Commission has to make its review and its final decision within 120 days. **Chairman Ludwig** said that if they were meeting every other month, they would have three meetings to do that in.

**Chairman Ludwig** asked if there were any other comments. No one came forward. He encouraged people to contact the staff regarding anything on this subject. Some of the staff and some of the commissioners would like to cut down on the number of meetings in the interest of economy for both the public and the Commission. They will not act hastily and they really want people to come forward with their ideas.

## **INTERNET GAMING**

**Commissioner Heavey** said he read in the "Casino Crime" publication an article on Internet Gaming. Apparently there is some utilization of individuals to maintain web sites and to collect gambling debts that occur on the web sites. He said he wants the staff to look at requiring anybody that does anything with regard to Internet gaming within the jurisdiction of the state of Washington to be licensed. He said he didn't think they would be able to do much about keeping an eye on Internet gaming.

**Chairman Ludwig** said he brought with him today to the meeting a computer disk put out by U. S. Lottery. He said he understands that the Couer d' Alene Tribe has proposed gambling over the Internet. It is his understanding that jurisdiction over that rests with the federal government and very little can be done by the states. **Commissioner Heavey** said he thinks the Commission can license the people who maintain web sites in this state, collect bets or pay winnings. That is what he was thinking he would like the staff to take a look at.

**Director Bishop** said this issue has been looked into and their stance so far has been that if anyone is involved, they have not found a way that it can be legal under state laws. To date, what they have done is send out a cease and desist letter. People have complied so far because it would be a felony for them to be involved in this type activity. If it could be licensed, they would explore that, but he can't think of anything that could be licensable that could be operated over the Internet. It is a very interesting subject. During the NAGRA conference attended recently by some of the staff, he attended a session on how Australia has federally authorized gambling on the Internet and by law determined that if it is a licensed activity, it is legal, but anyone then that doesn't get a license

is operating illegally. They have recognized that it is an issue that has to be dealt with and their approach is to legalize it so they can then get some control. He is pursuing what would happen in Washington if a citizen elects to participate because that would probably be against the law. The staff will provide the Commission with some input on this.

## **ADVERTISING NON-COMPACT CASINOS**

**Chairman Ludwig** said another concern that some of the commissioners have privately mentioned or thought about is advertising within the state gambling activities that the Commission and the state attorney general considers illegal. He was reading in an airline magazine with an ad from a casino here in Washington that advertises slot machines in their ad and shows pictures of a slot machine. **Ms. Tellefson** said she was familiar with the advertisement to which he was referring. She said the staff had received a copy of an Alaska Airlines advertisement and they had sent a cease and desist letter. The airline had responded and said they did not understand it was illegal and they would be taking that out. **Chairman Ludwig** said that was the one he saw and was pleased to hear that kind of advertising is being addressed. **Ms. Tellefson** said that technically it was engaging in professional gambling because they are soliciting for someone to be involved in an illegal activity. She said they had not taken their resources out to track down everyone, every hotel that may have a brochure or every newspaper that may have an ad, but when they receive a complaint, they do follow up on it.

## **“FRIENDLY LAWSUIT”**

**Ms. Tellefson** called attention to a copy of the “Friendly Lawsuit” order that was in the commissioners’ handout packets, State of Washington v. Chehalis. She said that back in 1994, Governor Lowry and Attorney General Christine Gregoire after a summit meeting with a number of the tribes, agreed to enter into a lawsuit with ten tribes where all parties would go together to a federal judge to ask what is negotiable in Washington. The question was, are gambling devices permitted in Washington in a tribal state compact and, if so, what types? The judge said that gambling devices are permitted except those that take a coin or token or other thing of value to activate the device or devices where the player plays individually against the device or terminal. The Order also states that the Gambling Commission or the negotiator for the state must implement this language within 60 days in tribal state compacts. At this time, Director Bishop and she have been taking time to absorb the Order and will be meeting with the Attorney General’s office to discuss it and anticipate setting up some meetings with the tribes in the next couple of months.

**Chairman Ludwig** asked if there were compact operations that have devices that meet that definition now. **Ms. Tellefson** said that there are devices that meet part of that definition. The Order clearly does say that slot machines are not allowed in Washington. Slot machines are prohibited, but there are devices that are not quite slot machines. A device that they have seen is called the Tab Force device made by a company named Infinity. It takes a pull tab that has 20 plays on it and is plugged into the device. The device reads a bar code and it basically allows the player to visually watch or play out what’s already inside the pull tab. The question is, if that pull tab is a thing of value that’s inserted into the device and whether or not that would disqualify it from being permitted. These devices have been considered to be Class II and when Director Miller was here, the staff reviewed the device. The device itself does not hold any pull tabs; it doesn’t take any money; it doesn’t pay out any money. It’s kind of like a grocery store bar code scanner that reads what’s in the pull tab. Director Miller’s determination was that it was Class II, if anything, and then he also reserved the right that if the NIGC should make a determination that it’s not Class II but Class III, then they would reverse their position. She said that, so far, the NIGC has not made a determination at all. She said she imagines that they will be seeing different variations of devices attempting to meet whatever this order means and they are still reserving their judgment regarding what the Order actually means.

**Commissioner Forrest** said, in reading last month’s minutes, the spokesperson for tribal gambling in regard to their new rules had essentially two themes. One was they had implicitly represented that the state wasn’t going to change the ground rules for state non-tribal gambling and that they could somewhat rely on that in their investments. He said that didn’t seem very persuasive, certainly it would be a legislative problem, not a Gambling Commission problem. The other thing that they urged was that the Commission staff had strongly taken the position that the requirements that they imposed on tribal casinos were essential and indeed the minimum



essentials to guarantee an honest operation. They obviously felt that there was a two-tier system. Their concern was that the Commission would somehow make it less burdensome on non-tribal casinos than it is on tribal casinos. He said he did not understand all of the workings of this and he did not know if it were premature or not to think about it, but it didn't strike him that that was a frivolous concern. They would want to be sure that whatever minimum rules the Commission eventually establishes do not say that the Commission is less protective of the public in the non tribal casinos than the tribal casinos. Despite that fact, there may be substantial differences. They are governments and non tribal casinos obviously are not. As he read the minutes over, it occurred to him that this was a little bit delicate and would take some thought. He said he did not know if it should be now or whenever but he would like to have the staff's reaction to that problem. He wanted to know how the Commission is moving to resolve it rather than be confronted with it. At the staff's convenience, he would be glad to be enlightened. He said maybe it is a pseudo problem, but it seemed to him that there was merit to the concern. Obviously the greatest concern is that they feel that, like every element of the industry, any change in one component has effects on everybody else. Expanding card rooms is going to have an effect on tribal casinos just like expanding tribal casinos had an effect on card rooms and both of them had effects on charities. The world is a place where every element of the gambling economy used in the big sense has an effect, and not a minimal effect, on the other elements.

**Director Bishop** said the gist of the concerns expressed to him outside of the meeting was that a breach of integrity affects everybody. That is staff's main task, to make sure that the integrity remains solid all the way through. The rule and the accompanying contract in some cases gives the director a lot of leeway in dealing with the lower tier activities -- bets up to no more than \$5 after they have passed muster and no more than four tables or five tables. He said he expects to be conservative in applying different standards to any of them at least until they get some experience. They will be looking at it very closely before any variance from it. There are ways that one can maintain control in a small environment by adding or maybe doing things in a different way. Rather than making specific requirements, his approach is going to be to explain to them what the staff is trying to accomplish and then have the owners tell the staff a way they can accomplish that goal, which will in turn make the staff feel that the integrity is maintained. It will be a tight line to walk, but the commissioner's point is valid.

**Senator Schow** asked if the devices that read pull tabs that are now in a number of the casinos on tribal land are allowed in card rooms or non tribal taverns. **Ms. Tellefson** said the manufacturer would have to be licensed. She has heard that they are attempting to go through the licensing process and will be filing an application with the Commission. Technically, there might be a change that needs to be made or a definition that would need to come before the Commission defining what a chance is. Right now, the statute says that pull tabs can be sold for \$1 per chance and there is no definition of what a chance is. This particular pull tab has 20 chances on one card so with the regulatory change, that's a possibility also. Right now, they are not in the licensed card rooms or taverns or lounges primarily because the manufacturer is not licensed. They can operate in the tribal arena because they are designated as Class II. Pull tabs are Class II just like bingo is Class II, and Class II activities are only under the jurisdiction of the federal government and the tribes, so the state doesn't have any involvement there. That's why they are in the tribal arena.

**Chairman Ludwig** said the meeting will be followed by an executive session. There will be no further formal action following this executive session.

**Chairman Ludwig** adjourned the meeting.

## WASHINGTON STATE GAMBLING COMMISSION

\*\*\*\*\*

### MINUTES COMMISSION MEETING FRIDAY, OCTOBER 10, 1997

**Chairman Ludwig** called the meeting to order at 9:30 a.m. at the Best Western Icicle Inn, Leavenworth, Washington. He introduced the WSGC staff and Commission members at the head table.

#### MEMBERS PRESENT:

**CURTIS LUDWIG, Chairman;**  
**EDWARD HEAVEY; MARSHALL FORREST; and**  
**PATRICIA L. HERBOLD; and Ex Officio Members**  
**SENATOR MARGARITA PRENTICE, and**  
**SENATOR RAY SCHOW**

#### OTHERS PRESENT:

**BEN BISHOP, Deputy Director;**  
**SHERRI WINSLOW, Assistant Director, Field Operations;**  
**CARRIE TELLEFSON, Division Director, Policy, Planning and**

**Support;**

**SHERRI WINSLOW, Division Director, Field Operations;**  
**CALLY CASS-HEALY, Division Director, Licensing Operations**  
**JONATHAN McCOY, Assistant Attorney General;**  
**and SUSAN GREEN, Executive Assistant.**

#### APPROVAL OF THE MINUTES FROM THE SEPTEMBER 11-12, 1997, MEETINGS

**Commissioner Herbold** moved to approve the minutes from the September Commission meeting. **Commissioner Heavey** seconded the motion. *Vote taken; motion carried with four aye votes.* **Chairman Ludwig** said the minutes are approved.

#### STAFF REPORT

##### **CARD ROOM ENHANCEMENT PROGRAM**

##### **SHERRI WINSLOW, ASSISTANT DIRECTOR, FIELD OPERATIONS**

**Ms. Winslow** said the card room enhancement program is moving at a rapid pace. They are working quickly to implement WAC 230-40-900 if it gets passed today for player-funded and house banking. Currently, they are transitioning the program coordination from Public Affairs to the Field Operations A.D.'s office. Ms. Tammy Bodmer is the new contact person in the Lynnwood office regarding the test program. They are attempting to formalize the request process for house banking and player-funded banking. If they have a written request from those people wanting to participate, they will be hearing from staff soon. If they are not able to get information out to the organizations because they are not on a list, the staff requests that they contact Tammy Bodmer and information will be sent to advise people of what is going on with the test program. Licensees have been scheduled for Commission review based on the dates that the requests were received at the public affairs office or the Lynnwood Office. They verbally notified people about the test at prior Commission meetings and sent out a letter dated October 1, 1997, to let people know about the process. Letters were sent to all card room operators and also people that had sent in information stating that they were interested in information on the test program. Those licensees requesting to participate will be asked to complete their internal controls, have their operations ready to go, and customize the records and reports for their operations before staff begin to work with them on this pilot study. That is specifically for player-funded banking and house banking.

**Ms. Winslow** said staff time allocated to assist the licensees in this process is 40 hours. Anything over and

above that time will require an additional deposit amount to cover the costs. As implementation evolves with this process, they expect some minor modifications to help create more flexibility and cover some issues that have not been addressed so far, particularly in Appendix B and C and also with the records and reports. They are really delving into an area that is fairly unfamiliar with the licensee groups and the field operations groups, so they are trying to fine-tune things at this point. They are also closing on completion of some minimum standards for Level I licensees. These are the participants with five or fewer tables. Rather than in the prior Appendix C document that commissioners received, there were sections that said the director can waive the requirements in this section if it is a Level I licensee. What they wanted to do was come forward with some minimum standards that they must have for those individuals so that they do not have to come forward with their own recommendations. The staff is targeting the first of November for all of these changes and if any contracts are approved prior to that time, they will be subject to those modifications.

**Ms. Winslow** said another issue at the forefront of this implementation is card room employees and with licensees with player-funded banks and house banking. For these operations, key employees will require licenses prior to working in the facilities. This is a little bit different than what they have done in the past. In card rooms, once an applicant turned in their license application the card room employee could begin working. In this new house banking, player-funded banking, or custodian's PSJs, they want to have the license done before they begin working. This is going to have a major impact on their staffing in the licensing section, and they have tried to phase this process in. They have discussed requiring currently licensed employees to submit fingerprints and a \$50 renewal cost at the time the card room license renews. For new card room employees, they will require an application, fingerprints and then the applicable fees for those individuals. For tribal gaming employees, if there's a transfer situation, they will request an application and a transfer fee to be submitted.

**Chairman Ludwig** said he's been curious and has had an inquiry regarding the list she is making and adding to. He wondered if that meant that staff would go right down that list and do them one at a time or if they would be working on several at a time. **Ms. Winslow** said it would depend upon their resources. She said they would attempt to do more than one at a time. They hope they can do three to four at a time, but they don't want to be juggling too many. Anyone who has completed internal controls, their operations are ready to go, and they have their records and reports finalized and they are at the top of the list, they are the first ones to go forward. Then if they don't have any aspect of that ready, they go to the next person on the list. They would then go back to them after they complete the next person and ask them if they are ready. If they must continually go back, then obviously the staff will have to put them on notice that they need to come back to them and contact them and let them know when they are ready.

**Chairman Ludwig** wondered if her reference to 40 hours meant staff hours and if so, what if two staff people are working on it. He asked if that would be 20 hours each and would she have more than one. **Ms. Winslow** said yes to all of the questions. She said they already have more than one staff person working on each licensee. They are attempting to get this done in a timely manner. The licensees are eager to get going. They think it will be good for training purposes to do a team approach and they are trying to develop some consistency statewide so they are getting exposure in each team from different regions.

**Chairman Ludwig** said he remembered hearing some discussion earlier that the staff had hoped to take some people from the tribal gaming unit (TGU) to work with the regular special agents on this. **Ms. Winslow** said TGU agents have been assisting them in a training capacity. They have been working with them on different programs. Other than that, she did not know how much participation they are going to be doing on the reviews because they have a heavy workload right now, too. If they get in a bind, they may ask for some assistance from the Special Operations Division, but at this point it has been mostly training and documentation assistance.

**Commissioner Herbold** said in the impact statement, it tallies up all of the hours for staff training, pre-opening inspections, compliance inspections, etc. and comes up with a huge total of more than 1,700 hours. Just using 2,000 hours As a typical yearly tally for a full time person, that comes up to about 8.5 FTE's. She wondered if they have the people to devote to this. Does this imply that if these 50 card rooms that they are anticipating might get into this program actually do, will they be looking at additional employees to cover this and will the fees that are generated through the licensing process pay for these additional employees if we need them?

**Ms. Winslow** said those eight people are not on staff yet, but recruitment is currently taking place. The director

has approved putting on approximately four people and they expect to have the fees to pay for that cost. They will not go forward with hiring more than four right now until the deposit fees are collected. The other issue is that they are not going to be able to bring all those licensees on at once, so as they bring them on, they will have the staffing to cover that. Bringing on new staff creates other difficulties in that they must be trained and then move people into new positions. The process will not happen overnight. She said once the test period is over and the permanent rules go into effect, these extra people will still be required because they will have a higher level of inspections ongoing because of the nature of the program operation.

**Commissioner Forrest** asked Ms. Winslow what the Commission might be confronted with in implementing this program. **Ms. Winslow** said her main concern is that people understand that this is an entirely different environment than they have had in the past in Washington card rooms. In the past, they have had card games where people paid to sit there and the game was between the players. Now, with the house banking environment, they are going into an entirely new area that creates a potential for more schemes and thefts by players to occur. They need to have adequate security, surveillance, and internal controls over the operation to ensure that things operate the way that they should, the money goes where it is supposed to go, and players are protected from being cheated at the games.

**Chairman Ludwig** said the house needs that protection as well. **Ms. Winslow** said she's not sure if all the licensees are aware of it. They think they are just transitioning to a little bit higher level of gaming. The ones that come forward early on are aware of what the requirements are. However, some of the people that want to get in at the lower levels are not fully understanding what the impacts could be to their operations because they want to keep their costs down to a minimum level. They need to recognize that there is tremendous potential for them to lose money going into this atmosphere that they didn't have before.

**Chairman Ludwig** referred to the lower requirement for five or fewer tables and asked if those requirements were published now or if she were working on those. **Ms. Winslow** said they expect to have those finalized by around the first of November. The director must look at them and they don't want to issue something until he's bought into it. **Chairman Ludwig** said that suggests some problem that a person might be preparing their facility to meet the requirements for a 15-table operation and they only intend to have 5, and asked how they would adjust. **Ms. Winslow** said they have had quite a few licensees that expect to be at that lower level of operation and they are waiting to see what those minimum standards are going to be before they start working toward participating in the test. So they are waiting eagerly to get these minimum standards. If they wanted to get started earlier, they can work toward a higher level of standard or the standard that is out there.

**Commissioner Forrest** asked if any other state has a comparable regulatory climate for this particular activity and particularly this two-tier and so forth or is Washington kind of pioneering on its own. **Ms. Winslow** said Washington is a pioneer state and this will be a golden opportunity for staff to learn.

**Commissioner Heavey** referred to item V, "Terms and Conditions of the Contract," where the last sentence talks about conflicts with the provisions of WAC 230 and asked if there were any conflicts. **Ms. Winslow** said there might be a few minor conflicts. She said she was unable to address those right now. They have decided to work toward Appendix C and if there were any conflicts that staff would have as a material concern, they would be addressing those.

**Director Bishop** said the only specific conflicts he is aware of now are they have asked approval on a temporary basis during the test of several games that are not by rule social card games at this point. None of the house banked games have been approved or are in rule form as social card games approved by the Commission, so this will be in conflict to it for sure. There are certain other things having to do with chips before; they have been on an absolute basis. This will require them to be on an imprest basis or outstanding chips will have to be shown in the record keeping. It is just a different operating system than the current rules were set up for.

**Commissioner Heavey** asked if the Commission can contract away the requirement that any operation be consistent with the existing rules and regulations. **Mr. McCoy** said that this is a pilot program and the pilot program rule under the APA allows deviations from the standard rules that apply throughout the agency. Another point where this deviates from that is the remedy provision where the agency has an expedited process. This is not really a change in license, it's a different activity that's added to an existing license operation. Because of the

sensitive nature of it, this allows an expedited process for taking people out of the program if there's a problem with the way things are operating and the appeal is just to the Commission. It is not a normal licensing process because they are not taking away their license; they are just disallowing an additional activity. The basic answer is, "Yes, we do have the authority to deviate from the application of the panoply of WAC's that we have already adopted in a pilot program."

**Commissioner Heavey** said he'd be more comfortable if the word "conflict" were changed to "deviation." He said the word "conflict" carries certain implications. **Ms. Winslow** said that can be changed.

**Commissioner Heavey** referred to wording in VII that said "The decisions of the Commission shall be final and not subject to further review." He wondered if there was a legal basis for preventing somebody from seeking further review, such as going to court and saying the action was arbitrary and capricious. **Mr. McCoy** said that they have an expedited process; this is not technically a licensing decision so it doesn't really fall under the adjudicatory procedures of the APA. That would not prevent somebody who had a complaint from filing an action under the Administrative Procedures Act for another agency action. It would fall under that exact provision that Commissioner Heavey had suggested, that the standard would be "Is it an arbitrary and capricious action?" That would be the standard under the APA for another agency action and so it is incumbent upon the staff to make sure that they have a good record to demonstrate why they took the action.

**Commissioner Heavey** asked if that should read, "not subject to further administrative review." **Mr. McCoy** said there are several procedures in the agency's WAC rules that govern the administration of hearings. Those would not apply in this procedure. This is a more expedited procedure and so those rules would not apply. He said he thought that Commissioner Heavey was correct about that, that it really should say that there will be no further administrative review because they have the ability for reconsideration and they have the ability to do other things. Those procedures do not really apply because, again, this is not a licensing action. This is an additional activity that's allowed for an existing license. Unless it is a violation that is serious enough to warrant charges, the underlying license is not going to go away because this activity is terminated.

**Commissioner Heavey** said he would have more confidence in the agreement if there were a recitation stating that this card room enhancement program was a pilot program outside of the normal licensing procedures, so it establishes the basis for the deviation from WAC 230 and also establishes the basis for limiting administrative review. He said that if it were put into the agreement, then you know that they know that. **Mr. McCoy** agreed.

**Chairman Ludwig** asked if the reference to this being a "study program" solves his concern. **Commissioner Heavey** said his copy does not say that. **Mr. McCoy** said he thought that the Chairman had pointed out under II it says that "The purpose of this agreement is to set forth the requirements for participation in a study program to implement WAC 230-40-900." So that does reference the WAC under which it is being done. He asked Commissioner Heavey if that answered his question. **Commissioner Heavey** said he just wanted to have more confidence about their position and if Mr. McCoy thinks those words set that forth, then that is fine with him.

**Commissioner Herbold** said she has more questions regarding the staffing. She was surprised to hear that Washington state is breaking new ground, that no other state does anything like this. Her suggestion was going to be to get someone from Nevada or one of the other states that is really into more enhanced card games who could really help out with the staff training aspect of this. She asked if there really were no other state that has anything at this level. **Ms. Winslow** said what Nevada has is very similar to what Washington has. The agency's tribal gaming unit has experience in the tribal gaming environment, which is very similar. It is just that there are dice games, which are not allowed in this card room enhancement program. She said they had been gaining some expertise through the North American Gaming Regulators Association and they do expect to gain some additional expertise through the World Gaming Conference. They are reviewing different surveillance systems across the United States and gaining information on protection manuals for game play and internal controls. So they are getting the expertise; it's just a little bit slower. As far as hiring somebody or bringing somebody in from outside to consult, they expect to gather more information about other people's expertise in the next coming weeks. Many people have come forward and offered their services, but it is really hard to evaluate their capability to provide those services unless they get some substantive information about their background. That is what they are attempting to do.

**Commissioner Herbold** said she was not thinking in terms of consultants; she was thinking in terms of Ms. Winslow's staffing needs as she is looking for more employees to help her implement this program. She wondered if it would not be helpful to have someone who has been in a similar environment who could offer that experience as part of working with other members of the staff to enhance their training capabilities. **Ms. Winslow** said they are recruiting at this point and they had a few people apply for positions that are coming out of the tribal gaming environment. As far as recruits coming in from Nevada or other jurisdictions, she is not aware of any. She knows that they are trying to recruit in many different places, not necessarily just within Washington state.

**Chairman Ludwig** suggested moving on, since this topic will come up again during the rules portion.

**Greg Jones**, Commercial Inn, Kennewick, said that due to their remote location, it is often difficult for his staff to attend Commission meetings. He said they were unaware until now that this list was being compiled by the staff and that licensees who have expressed interest in entering house banked card games would be placed on a chronological list in order to be able to participate. Although he had expended quite a bit of capital in this regard, he was hesitant to proceed to gather everything that is necessary. After he had turned in his application, he discovered that his name was so far down on the list that it would be months before the staff could consider his application and allow him to enter into gaming. In that case, there would be no return on his initial investment. Although he had done all he could to inform himself by talking to local law enforcement and by hiring consultants and professionals to help him, he was concerned that there still might be no way to expedite the process because he was too late.

**Chairman Ludwig** asked how many tables he had planned. **Mr. Jones** said right now they plan for five tables, but they have aspirations for adding more based on public interest. His main concern is that if he expends the funds and the time to comply with the rules and regulations to have his establishment comply with everything, he will discover that it will be months before the Gambling Commission staff can work on his application and allow him to proceed. He said he has been using Appendix C, which is a rather broad-brush document that does not necessarily lend itself completely to the internal control procedures that need to be prepared. He said that attending Commission meetings is expensive and time consuming and when the word gets out only through these meetings, if he or others like him are not in attendance, they do not receive the timely information. It is not for lack of trying that he is unprepared to present the documents that are now required, but even if he were prepared, his establishment is so far down on the list that they may have to wait for months and he cannot afford to make such a huge investment without knowing when he can begin to operate. He wondered what he could do to improve his opportunity for faster service.

**Chairman Ludwig** said that they are going to have another set of rules that may apply to his initial operation and if they adopt the rule today – and that will be determined this morning – it won't be effective until sometime on or after November 10, and he will have 10 days to worry about whether he wants to meet the minimum requirements to start. **Mr. Jones** said that, as he has interpreted Appendix C, his establishment, with five tables and maximum bets, has to follow the most stringent rules and procedures as outlined by the Gambling Commission. It's not above five tables, it's up to five tables and is also based on the maximum wager allowed at that particular table. He feels that the rules and procedures are applicable to even some of the smaller establishments. He has been told by his local agent and through contacting the Lynnwood and Olympia offices that for an establishment such as his, it would be January or February before the staff would be allocated to even begin a review of his documentation. He said his question is how this list was comprised, considering that establishments in outlying areas could not get to the Commission meetings on a regular basis. He said he worked all last night and drove all morning in order to get to this meeting, and it is rare for him to do that. He's the only representative from any establishment in his area present today. He wants to expedite their entrance into this form of gaming.

**Ms. Winslow** said there was, unfortunately, a glitch in notification to licensees. The staff verbally notified licensees at prior Commission meetings to get in their request to the public affairs office. They followed that up on October 1, 1997, with a written notice to all card room licensees to get their requests in and that is why she brought it up again today. If someone would have had the opportunity to get copies of the minutes, they would have at least had that information available. Unfortunately not everyone had that opportunity. They are working very closely with licensees to get them up and running as soon as possible. The fact that somebody might be down at the lower end of the list does not mean that they will not start relatively soon. It is totally contingent upon the internal controls being completed, the operations ready to go and the records and reports customized to the

operation. A lot of the organizations that want to participate are not ready yet and are still in the thinking stages. A lot of them are remodeling their operations, so there is actually an opportunity if somebody has all of those things completed to go relatively soon. How soon is really dependent upon where they are at on the list and who is ready.

**Chairman Ludwig** asked if there were any other comments. **Ms. Tellefson** said that one of the things about a pilot test is it gives them the opportunity to take things step-by-step. Initially, when the legislation passed, they had started on a draft of proposed rules that would be permanent rules and that draft was of significant length, about 70 pages, and they were still working on adding to that. Had they gone forward with that approach, they probably would be in the rule making process for quite a few more months, so it is important to point out that with the pilot test, they have given licensees the opportunity to get involved in the program a little bit earlier as opposed to going forward with permanent rules, which would have been a much longer and more cumbersome process. It is not a perfect process but it is one that allows licensees to get involved a little earlier. They are limited with few staff, so that is a restraint as well.

## **RULES**

### **GAMBLING SERVICES SUPPLIER RULES**

New Section WAC 230-02-205 – Gambling services supplier defined

New Section WAC 230-02-206 – Gambling services supplier representative defined

New Section WAC 230-04-119 – Licensing of gambling services suppliers

Amendatory Section WAC 230-04-124 – Licensing of manufacturers, and distributors and gambling services supplier representatives

Amendatory Section WAC 230-04-125 – Distributor or gambling supplier representative license may be reissued when changing distributors or gambling services suppliers

Amendatory Section WAC 230-08-025 – Accounting records to be maintained by distributors, manufacturers and gambling services suppliers

New Section – WAC 230-12-223 – Prohibited practices—Lease and compensation

Amendatory Section WAC 230-12-225 – Repair or services not to be conditioned upon exclusive supply arrangement

Amendatory Section WAC 230-12-300 – Resident agent to be appointed by foreign manufacturers, distributors, gambling services suppliers, and commercial amusement game operators

Repealed Section WAC 230-12-220 – Agreement requiring payment by licensee based upon percentage of receipts from authorized activity-Prohibited

**Ms. Tellefson** said these ten rules are up for final action today. Nine are new or amended rules and one is a repealer. These rules cover the licensing of those who provide services to licensed operators or to Class III casinos. Services such as consulting, management record keeping, and storage or counting are examples of the type of services. She referred to the orange copies of rule changes in the commissioner's packets. Those copies indicate where there have been changes between last month and this month. Rather than going through each word, she decided to summarize the changes. In Item 3A, the change was that governmental affairs consultants such as lobbyists are exempted from being licensed as gambling service suppliers along with accountants and attorneys. Item 3C is a license class rule and there was a third license class added, a "C" license. The "A" and "B" license class was changed so that it is the same price as "A" and "B" licenses for distributors, and the "C" class was added for those service suppliers whose contracts are based on the level of gambling activity or the scope. Item 3D was changed for consistency purposes and requires all new applicants for gambling service supplier representatives and distributor representatives to actually receive their license before beginning work, which is consistent with those who change employers. Items 3E and F have housekeeping changes. The staff recommends final passage.

**Commissioner Herbold** referred to Item 3C, WAC 230-04-119 in (5) where it states that "a gambling services supplier shall not also be licensed as a manufacturer, distributor or representative." Then, moving over to Item 3D, which talks about licensing of manufacturers, distributors etc., it says in (1) "a manager or supervisor who is not a sole owner, partner or major officer...shall be licensed as required by this rule." She wondered if she were reading correctly or if this is contradictory. One says they can't be licensed if they are already a manufacturer or a distributor, and then it goes on to talk about how one gets licensed as a gambling services supplier if they are already a licensed manufacturer or distributor. **Ms. Cass-Healy** said that subsection (1) of WAC 230-04-124 is simply stating that if a person is a sole owner, partner, major officer or owner of a substantial interest in the business being licensed, they do not need to get an additional representative license for that particular business.

So it would not be in conflict with the provision of Item 3C, which has to do with two separate businesses being licensed.

**Commissioner Herbold** then wondered if it were the exception where a manager or supervisor who is not a sole owner has to be licensed -- in paragraph one about the middle. She said she is confused. If you are a licensed manufacturer or distributor, she was concerned about a gentleman who attended last month's meeting who sometimes offers advice to operators, for example, on how to run their show. She wondered if he would be prohibited from engaging in both activities as a manager of a charitable operation and giving advice to others. He was concerned about having to pay a second fee. **Director Bishop** said that the particular gentleman to which she was referring was a bingo manager and would not be subject to this provision. This only applies to manufacturers or distributors being additionally licensed as service suppliers. He said that when they went back and re-evaluated it, he would have a \$575 fee. **Commissioner Herbold** asked if he would have to be licensed but then not be required to pay a \$2,000 fee. **Director Bishop** said he would be licensed under a Class "A" or Class "B", which would cost him \$575 for the additional work that the staff would have to do to regulate the additional activities versus being just a licensed employee.

**Chairman Ludwig** called for public comment.

**Rob Saucier**, Mars Hotel, Spokane, said he is still confused regarding licensing at different levels. He said that he is familiar with the restrictions on licensing at different marketing levels with pull tabs, but he is still unclear about what this rule says now. In the case of Ron Porter, who owns Eddie's Diner and is a licensee in that regard but also has a consulting service, is he allowed to continue in that operation as is or is he prohibited? Secondly, his organization has invented their own game or scheme on a game that they refer to as "Horseshoe Blackjack" that has been very popular. They would like to be able to license that and offer it to their competitors as well. He wants to be clear that this set of rules does not prohibit that activity in the future. **Ms. Cass-Healy** said this particular rule would not prohibit that activity. She said that particular issue has not yet been decided as a policy call as far as marketing levels at this point. The debate has been ongoing. This rule simply prohibits a gambling service supplier from being licensed as a manufacturer distributor or representative of one of those businesses so this rule would not apply to Mr. Saucier as an operator. **Mr. Saucier** wanted to make sure the record reflected this response in case this question comes up in the future. He also wanted to know why the Commission is concerned about different marketing levels. If everybody is licensed and everybody knows who is doing what and everything is in writing, why are they even concerned?

**Director Bishop** said this comes back to the basic philosophy question that they were discussing in the manufacturer distributor rules. It has just been traditional. They had several discussions in depth, and somewhat heated in some cases, between the staff as to whether this philosophy is still valid in today's environment. Going forward with this rule, the staff carries the same philosophy. He said that although his answer may not have responded to his question, there is a rule currently that prohibits that structuring. There must be a break in the chain between operators, manufacturers and distributors. There must be a break between the manufacturer or offerer of the products that are used and the actual user. He said he is sure the staff will get to that question. The rules that were passed last month passed with comment that the staff needed to go back and address all of these issues that had to do with the Commission being involved in the marketing of products.

**Senator Prentice** asked if it would be possible to give the licensees a better idea of when they could expect some kind of answer from the staff. She said that as this philosophical discussion goes on, it leaves the industry representatives in an ambiguous position of not knowing what to expect. She asked for a clarification of the underlying philosophy between the thinking and that line being drawn. **Director Bishop** said the traditional regulatory response to gambling has been to maintain separation between those people who supply and those who operate because there is the fear that a manufacturer or distributor will use threatening influence over an operator who uses a manufacturer's or distributor's machines and products. There are some regulators who believe that there is a different type of environment today, a more controlled environment than ever before, but the tradition has been to keep the separation between the people who supply and those who operate.

**Senator Prentice** asked when it would be possible to expect some kind of answer. She said she imagined that industry representatives are feeling a great deal of discomfort thinking they could potentially be breaking the rule and be in violation if they continue doing what they are doing. She asked Mr. Saucier if that was correct. **Mr.**



**Saucier** said yes, and that they have plans about what they want to do, but he is trying to find out if this rule says they are now prohibited from doing that.

**Director Bishop** said this is the first step to discussing it because they removed operators from this particular level. What they are saying now is there is potential between someone that is involved intimately with the operation itself. For example, "I'm offering consulting services about how you operate this business; I do your books for you; I also provide you with the punch boards, the pull tabs, or tell you how you should operate it; now I actually get down and do things."

**Senator Prentice** said that what probably was not foreseen, though, is that, say, out of someone's clever head, he brings out a new game and then is prohibited from telling others about it. She said she is sure that isn't the kind of thing that they were planning to address at that time. **Director Bishop** said he thought they would have to address that. Currently, the scenario that Mr. Saucier is talking about would be if he happened to patent a game and wished to supply that to other operators, he would not be a service supplier; he would be a manufacturer and would be required to have a manufacturer's license. If he is going to offer a product, be it this patented game -- much as Mikohn offers their product -- it requires a manufacturer's license, not a service supplier's license.

**Mr. Saucier** said he did not see the need to prohibit that. If everybody knows who they are and that they are licensed and that everything is done at arm's length, everything is writing, there's no pressure on anybody, it's all voluntary; he did not understand how that advances their industry by prohibiting them.

**Commissioner Heavey** said that perhaps it advances regulation and that is the Commission's function. **Director Bishop** said that all he needed was instructions to bring forward rules to discuss this issue and he assured everyone it would be on the agenda.

**Mr. Saucier** said that charities have not been able to benefit from fundraisers for years and have been declining steadily. He said they would like to offer in their facility an opportunity to take a section of their facility and offer that to charities so they can conduct fundraising events. They would like to supply them with that equipment to do so; therefore, they would be the distributor. And they would like to be able to do that, again, by licensing that activity through the Commission. He said he hoped that this rule would not prevent them from doing that. And he is still unclear about what it allows or what it prevents. He wondered if the door was being closed on something here through this rule. He said he thought the licensing of gambling service suppliers made a tremendous amount of sense. And in that regard, the rule makes sense to go forward, but to adopt a policy that prohibits certain activities or certain people who are in the industry from going forward, he does not think that issue has been debated enough.

**Director Bishop** said that it needs to be clear that, first of all, they are not adopting a new policy. There is a policy that has been on the books since 1974 that prohibits this activity and requires this separation. They are not really adopting a policy now doing that, and actually they have said this does not apply to service suppliers. A service supplier could be an operator, which is the first step to examining this philosophy or policy that has been in place for over 20 years. **Mr. Saucier** said that he believes that a precedent is being set because the restriction on marketing levels, as he has read the rules, apply only to pull tabs and not to card games or other things. The restriction on marketing levels, as he read it, applies only to pull tabs.

**Chairman Ludwig** wondered if final action had to be taken today or if it could be delayed another 30 days and maybe hold a study group session on this specific issue. **Ms. Tellefson** said that it could be delayed. The Commission has 180 days before they must take action.

**Commissioner Herbold** wondered if it would be possible during that 30-day period for the staff to put together a little summary sheet that explains what the bottom line is if all of these rules are enacted as opposed to the commissioners reading each one and trying to figure out how they relate to each other. **Ms. Tellefson** said that could be done.

**Commissioner Herbold** moved that the gambling service supplier rules be delayed and that final action not be taken until next month. **Commissioner Heavey** seconded the motion. *Vote taken; motion carried with four aye votes.*

## HOUSE BANKED CARD GAMES

Amendatory Section WAC 230-04-110 – Licensing of manufacturers

Amendatory Section WAC 230-04-120 – Licensing of distributors

New Section WAC 230-40-900 – Public Card Room Enhancement Program Pilot study and test

Repealed Section WAC 230-40-999 – Public Card Room Enhancement Program Pilot study and test

**Ms. Tellefson** said these rules are up for final action today. These rules implement the 1997 legislative changes that authorized house banked card games. There are a couple of changes to Item IV C, which is the pilot test rule. One change clarifies that, although all contracts will be approved by the Commission, only those contracts that involved house banking or player-funded banking need to be accompanied by a pre-operational inspection. So contracts that just involve, for instance, additional tables will not need to be accompanied by a pre-operational inspection. It also clarifies the deposits run from January through December of 1997 and a new deposit will need to be submitted starting January 1, 1998. Staff recommends adoption of this rules package.

**Commissioner Heavey** asked for clarification of her first comment. **Ms. Tellefson** said that what they have done under this package is incorporate the 1996 card room enhancement program with the 1997 legislative changes. The 1996 card room enhancement program involved entering into an agreement with licensed operators for between 6 and 15 tables for alternative methods of collecting fees, like taking a rake, and for adding jackpots. The staff has never done pre-operational inspections in order for licensees to operate those particular activities. Licensees in the future that fall under this new rule, which combines both tests, will not need to have a pre-operational inspection if they are only going to, for instance, add a couple more tables but are not conducting house banking or player-funded banking.

**Commissioner Heavey** asked if that means it only requires pre-operational inspection if they are going into house banking. **Ms. Tellefson** said yes, or player-funded banking.

**Ms. Winslow** said she wanted to add to what had been mentioned earlier that any new agreement to the existing card room enhancement type activities would also have to come before the Commission. If someone comes forward and wants, for example, rakes, additional tables, PSJ's, they would also have to come before the Commission. What **Ms. Tellefson** was referring to earlier was if someone wants to add a table or a PSJ, that contract would not have to come before the Commission.

**Chairman Ludwig** asked if approval of these card rooms to conduct house banking would have to be approved at a regular meeting or a special meeting of the Commission. **Mr. McCoy** asked if he meant the approval of the contracts themselves. **Chairman Ludwig** said yes. **Mr. McCoy** said he would need to look into that. **Chairman Ludwig** wondered if it could be done by conference call even though it would not be open to the public that way. **Mr. McCoy** said he thought that the rules would require that a licensing action be done in open public session and that gets back to the question about this not being quite the same thing as a licensing action, but he would have to give it more thought.

**Commissioner Forrest** said that even if it were possible to do it by conference call, he thought it would not be a good precedent. He thought that a delay of a couple of weeks to discuss something with the scope of this importance should not be stirred up about delay. He said that he understands from personal experience how frustrating it is to have to wait for regulatory decisions, but it is part of the game. He said it is important that they not chip away at the public hearing, the chance for people to point out their errors, mistakes and omissions before the Commission commits them. He strongly suggested that even if **Mr. McCoy** said it could be done that they should not consider it a viable option. **Commissioner Heavey** said his views were the same as Commissioner Forrest's.

**Ms. Tellefson** said she did have a chance to really look at the Open Public Meetings Act, and it gives an exception to public hearings if it's a final order on a licensing issue, like an adjudicative proceeding, but she did not see any exceptions for other types of proceedings. **Mr. McCoy** asked if she said that the pre-operation inspection report was not required. He wondered if there is specific language that says that because the way he read it, it is included and wondered if there was an exemption. **Ms. Tellefson** said he must not have received the amended version. She said what they have said is that "Each new agreement shall be submitted to the

Commission for review and approval prior to commencing operations. In addition, each agreement that allows for player-funded and/or house banked card games shall be accompanied by a pre-operational inspection."

**Chariman Ludwig** called for public comment.

**Bob Tull**, lawyer from Bellingham, said the package before the Commission today is a very significant event. The rules themselves presented in this package are very simple and very straightforward. If a person wants to participate in this test, they must take their business and conform it to the standards the staff now thinks is most appropriate and then agree to operate that business under the ongoing, close scrutiny of the staff. They are subject to possible rather immediate changes of course or direction. A licensee participating in this test is not going to have the full certainty that he or she would have if they simply waited a year or so and let all the rules and regulations sift out. The really faint hearted should not apply. It will probably have some bumps. A number of people are looking at this and will see this as an important business opportunity, but are going to look at it carefully. Some of them will decide after a business evaluation that they are willing to take not only the business risk but also the risk of ongoing shifting rules and proceed. The only reason they will do so is that they do understand this agency from the Commission on through the director down to the staff is trying to come up with the best solutions for regulating gambling in a state that wants a high degree of regulation. Those who aren't ready to proceed simply won't. Those who are will have a decent opportunity.

**Mr. Tull** said he wanted to digress back to a couple of things that had come earlier in the day and in prior Commission discussions. He said he believed that the reason why there had been some discussion about other ways to have Commission review and approval was probably prompted by discussions that are apparently taking place about some revisions of the Commission's meeting schedule. For example, there could be circumstances where the Commission might regularly meet only every other month. There could be other circumstances, of course, where illness, absence or other difficulty would result in a Commission meeting not taking place on a regular schedule. He said it is his opinion that this type of review and approval is an action that, under the Public Meetings Act, requires that it take place at a meeting of the Commission. However, it is possible in some event where the Commission decided it was appropriate that a meeting could be conducted under certain conditions with one or more of the commissioners attending by telephonic conference. He said that this agency had done this in the past where it was inconvenient to have particular members attend, even Senator Prentice perhaps in one situation may have attended by conference call.

**Mr. Tull** said that there must be a place of meeting. It could be the Olympia or Lacey office; it could be someplace where several Commissioners could get together. His point is that, in the event in future years it becomes appropriate to have an out-of-schedule meeting, they could have a legitimate public meeting with notice to the world, an opportunity to hear by going to the meeting place or perhaps on some of the other conference arrangements that he is learning about, they can get people to dial in and participate. The records and materials all can't be handled, but that would be a public meeting to avoid the sensitive issues that Judge Forrest and Judge Heavey were specifically talking about. He said it was not necessary to make a decision today; it would depend on whether the commissioners decide if they need a less frequent meeting schedule. If there were certain problems, then the director would come forward with a suggestion and the chair could decide whether or not to arrange such an off-session meeting.

**Mr. Tull** said he also wanted to address a question that had been raised by Judge Forrest at the Wenatchee meeting when these rules were filed for further consideration. That had to do with whether it would be possible to make sure that sensitive surveillance and security and anti-theft information could be kept out of disclosure requirements. He said it is his view, based on some research done by a lawyer in his office and on some discussions with Mr. McCoy, who has been litigating aspects of this issue, that the sensitive information having to do with surveillance and security procedures absolutely must be kept confidential. He did not think there was any question that the agency would have the authority to do that under both existing rules and existing statute. It would be his suggestion that in the coming months, as part of the evolution of this rule package, that if there are some further refinements to the existing Commission rules on what parts of other packages of information should be kept private, that could be debated and discussed in a normal fashion. He said he thought it was clearer today than it was perhaps five or ten years ago that certain types of sensitive financial information can be kept private and he thinks the rules could perhaps stand some adjustment. In the meantime, it is very clear that the

law enforcement surveillance and anti-theft procedures, equipment and layout will be very simple to protect under existing statute and rules.

**Mr. Tull** said this is a unique setting and he thought it was an appropriate approach to address rule making in this setting. The Legislature has authorized a change in the way certain gambling activities can take place in licensed card rooms. If they went about the old fashioned form of rule making, it would not only take a lot of time, but they would then immediately commence extensive, ongoing, never-ending revision processes. This approach – the rule is a page and a half -- says to those who are in a hurry that as long as they trust the Commission and the staff they can start along the path. If they are concerned about that, they should stay out of the test. This is an extraordinary approach. It requires that they are willing to take the business risk. This Commission will continue to make sure its staff operates in a fair and careful manner. Most licensees aren't too worried about the evolution away from the standard, but if they are worried, they should wait until the final rules come out. He said that when the final rules come out, then people will have all sorts of protections and all sorts of administrative procedures that they can hide behind if they have a dispute, but in the meantime, the director settles disputes. It is a very powerful process. He said he thought it was also the way that they will find out what works in this state. He said he gathered from a comment made by Judge Heavey that he wants everyone to continue to focus on the role of the Commission, which is the regulation of gambling as distinguished from the specific goal of enhancing an industry.

**Mr. Tull** concurred with Judge Heavey that that is the role of the Commission. The role of the Commission, though, is also to do so with as much efficiency as possible and this test procedure will produce that type of result. He said he would like to take any questions about the process or about the proposal. It calls for the director to be put in charge and for the Commission to, from time to time, monitor what the director thinks is appropriate and for the director to come back to the Commission once this is all sorted out with a more elaborate rules package.

**Commissioner Heavey** said he is somewhat concerned with Mr. Tull's initial comments about the possibility that there may be significant changes in this process that has some substantial economic impact upon the operators. He said he understood that that was a possibility but it's at a substantial risk, because he said he really doesn't think the Commission should be putting people out on the edge and then cutting the ground from under them.

**Mr. Tull** said the risk is not substantial and it is akin to many other risks that business people have to take. He referred to his regular practice primarily in the area of land use regulation where zoning, subdivision, and other laws tell people how they have to do certain things and those rules evolve from time to time. The things that make the most sense rarely change radically or rapidly. The expensive parts of complying with Appendix C are the things of the most importance to operators. The surveillance equipment and security systems are at least as important to the operators as they are to this agency and its role of protecting the public. Any operator who overdoes what the Commission asks for is doing so because he or she wants to have an even higher degree of surveillance capability. Anyone who doesn't do it is unwise and the Commission is going to ensure certain standards. Other types of changes would be in the nature of changes that people already experience if they want to go to the Liquor Board and change their business operation, but they may have to move a partition or install a wall. He thinks the risk of precipitous changes is very slight. He thinks what will happen is that certain parts of these Appendix C rules will evolve to where the agency will be able to point out to people if they have certain choices. They can spend more money on internal personnel for accounting or they can do it outside or they can let the agency for times and materials charges oversee certain things. That type of evolution is where this change is going to move rather than drastic impacts on people. But those who start with a real small facility and don't gear up, they'll have to go back a few steps when they do decide to gear up. But most of the issues that are of importance to the agency are of paramount importance to the owners. The RGA originally had a petition that was withdrawn in place of this recommendation from staff to adopt these rules that will be effective, pursuant to the APA, 30 days from adoption. This system can then start to go forward. The cooperation throughout this rule making process thus far with the Commission staff has been excellent. It hasn't always been what they wanted, but it has been fair and it has been responsive and that is all the industry can ask for.

**Rob Saucier** requested clarification regarding license fees. He wanted to know what happens to people who have paid fees to this point and if there would be prorating. In looking at the last meeting's minutes, he said there was a question regarding the Charlie Mac's card room contract and at that time Chairman Ludwig had

asked why would somebody pay the fee to participate in the program knowing that house banking was right around the corner. At that point, according to the minutes, Ms. Tellefson said that all they had to do was add the fee for house banking in order to continue to conduct house banking. If they had already paid the fee for these activities, they could pay the additional \$5,000 and conduct house banking and add that to their contract at a later date. There was some discussion by Director Bishop regarding prorating. Mr. Saucier said he just needed a clarification because, for example, Charlie Mac's had just paid some fees and Mr. Saucier had just paid additional fees for additional tables a month or two ago. He wanted to find out if these were being prorated in through 1998. He wanted to know how it worked because a lot of them were unclear in terms of the fees going forward.

**Ms. Tellefson** said the staff has had significant discussions on how to figure out this deposit system because they received deposits over the last year at numerous times throughout the year and couldn't come up with a way to prorate every single deposit fee in a practical manner. The staff ended up proposing that deposits would run from year to year. This is contrary to what she said last month and since the rule is up before the Commission for final action, it is subject to debate. The person who had their contract up for approval yesterday to be in the enhancement program under the 1996 laws was told that if they wanted to get going now, they would have to pay the entire deposit and then resubmit a deposit starting January 1. They were willing to do that because they wanted to get their program going. But from a practical staffing standpoint, it would be very difficult to go back to every single contract to the date it was signed and then monitor that and then institute a new fee starting a year from the date that contract was initially signed. This decision was made for a practical purpose, which means there is no prorating.

**Mr. Saucier** said that the reason that is of concern to him is that when they applied for extension of a number of tables that did not require Commission action, they simply dealt with Susan Arland. He said he told her they intended to go into the new program right away and they wanted to make sure that the money they were paying would be credited for that because if Charlie Mac's paid \$5,000 and it was valid for two months, it is unfair. He said they relied upon that information, particularly those among them in the last several months who paid all of the fees as annual fees. They were considered annual fees, so if they are only getting a couple months and then people are saying it is not going to go forward, that they must start all over again, that is not fair. He suggested that maybe they could go back six months and prorate the fees, but it is too much of a burden for those who have been making some changes in their business just in the last month or two because they never really know and still do not know to this day whether this Commission is going to pass this rule and enact this test. There is a great degree of uncertainty on their part and they have had to go forward with a faith that yes, these fees are going to be prorated.

**Chairman Ludwig** said, whether it is prorated or not, the last question as he understood it was "Can that be applied toward the fee for doing the pilot program under house banking rules?" **Director Bishop** said the problem they got into was that they started a program in 1996 that required a deposit and at that point in time, it was supposed to run initially for one year. He did not recall if it was passed on an emergency basis or not. During the process it got changed to 18 months, but the fee or deposit was not changed. Then they rolled that program into this program. Assistant Director Winslow has been keeping track of all of the licensees' fees and Director Bishop said he thought the deal was that all of those deposits were going to be used up at or before the first of this year. He said he did not know if they had used all of the fees for people like Charlie Mac's who had come in. He said there must be a specific cut-off. If someone has a four-table card room at this point in time, they pay a fee. If one month before the expiration of their license they come forward and say they want five tables, they pay the additional fee and that additional fee is only good for the one month. That is the way they have always done business with card rooms. Whether it is fair or not might be up for debate. He said he could say that year in and year out they probably have had deficits in payment of the fees for card rooms as compared to the cost of regulating them and they got trapped by 601 in that area about the way they are doing business. They intend now to only charge the fees necessary to regulate. When it comes to fees they cannot always ensure fairness by rule.

**Chairman Ludwig** called for a recess at 10:55 a.m.

\*\*\*\*RECESS\*\*\*\*

**Chairman Ludwig** called the meeting back to order at 11:25 a.m.

**Mr. Tull** said that during the break he had a chance to talk to Mr. Steiner and Mr. Saucier with Assistant Director Winslow about the deposit question that had been discussed. They resolved that question and they understand it now and there is no need for further debate or discussion on that point.

**Chairman Ludwig** called for public comment. No one had further comments.

**Commissioner Herbold** moved to approve the house banked card game rules, which are Items 4A through 4D. **Commissioner Heavey** seconded the motion.

**Commissioner Heavey** said that Mr. Tull made a comment regarding the rules going into effect 30 days after adoption. It was his understanding that they normally go into effect in January and July. **Director Bishop** said the rules do not say the effective date. **Commissioner Heavey** asked that the motion be added to or amended to include that. **Commissioner Herbold** agreed and amended her motion to include the provision that the rules would become effective 30 days from filing. **Director Bishop** said the staff would try to get them filed today. **Commissioner Heavey** agreed with the amendment and gave his second to the motion.

*Vote taken; motion carried with four aye votes.*

#### **PETITION TO AMEND RAFFLE RULES**

**Chairman Ludwig** called for any public comment and remarked that the comments were mostly favorable at the last meeting. This allows charitable organizations to give a bonus if a customer buys a certain number of tickets.

**Director Bishop** said the staff had discussed this briefly and will be proposing an alternative. He will meet with Mr. Williams to see if they can work out some concerns regarding the accountability of this, especially at the \$25 level. They hope to be able to reach some consensus with Mr. Williams, the petitioner.

**Chairman Ludwig** asked if that would be in the form of an amendment so they don't have to start all over.

**Director Bishop** said that he could not say positively. The alternative may include that this activity be allowed for members-only raffles, which is not a rule that is on the agenda. That is why he cannot say at this time. They are studying the situation right now and will try to accommodate the petition the best they can.

#### **PETITION TO AMEND PUNCHBOARD/ PULL TAB RULES**

**Chairman Ludwig** asked if there were any comments regarding this petition.

**Ms. Tellefson** said this is up for further discussion only and would remove the provision that allows an operator to mark up merchandise prizes by 50 percent over and above what they pay for them. She said she thought the petitioner, Dennis Zaborac, was not here to discuss this petition, but it will be up for final action next month.

**Bruce Ellsworth**, Big Brothers and Sisters of Spokane, said the bingo manager of his organization asked him to comment on his behalf. He said they opposed passage of this rule because they use a lot of 10-cent merchandise games to stimulate their counter sales and they also use other games as well. This new change will hurt them. On the cash and merchandise games played in 1997, their merchandise games paid 41 percent of the total tax on only 4 percent of the gross sales. Over the last three years, the pay out percentage has increased from 66 percent up to 70.5 percent. The merchandise games help them to control the increasing pay out percentage. The trend is not only Big Brothers and Sisters, but the whole pay out percentage of the County has risen 4 percent over the last three years. For every 1 percent of pay out, it decreases their net income by \$12,000 while they continue to pay the same amount in labor and game costs.

**Commissioner Herbold** said her reading of the petition is that it applied to pull tabs. She wondered if it would also apply to bingo games which was what Mr. Ellsworth was concerned about. **Mr. Ellsworth** said that was correct – they were concerned about pull tabs, but he did not know if it would specifically affect all three – bingo, pull tabs and punch boards. **Ms. Winslow** said her understanding of the petition was that it was only to apply pull

tab activity and she said she believed that that was the concern he was addressing. He is concerned that it would impact their pull tab activity at their bingo operation.

**Mr. McCoy** asked for clarification on whether Mr. Ellsworth's pull tab pay out percentage of 70 something percent included the markup. **Mr. Ellsworth** said he believed so, but he was speaking on behalf of their pull tab manager and he could find out for sure.

**Chairman Ludwig** said this would be on the agenda for next month.

### **LICENSE FEE INCREASE RULES**

Amendatory Section WAC 230-04-202 – Fees – Bona Fide Charitable nonprofit organizations  
Amendatory Section WAC 230-04-203 – Commercial stimulant and other business organizations  
Amendatory Section WAC 230-04-204 – Fees - Individuals

**Ms. Tellefson** said these three rules are up for further discussion today. They increase the license fees consistent with the budget proposal that the agency put forward for this biennium and in accordance with the limitations set forth in Initiative 601, which is a 4.05 percent license fee increase. Next month staff will be discussing with the Commission the implementation dates. They are looking at a June 1998 implementation date as opposed to January 1. The staff recommends further discussion.

**Chairman Ludwig** said he assumes no one would be opposed to delaying the fee increase until June instead of January.

### **PUBLIC CARD ROOM EMPLOYEE RULES**

Amendatory Section WAC 230-02-415 – Public card room employee defined  
New Section WAC 230-02-425 – Licensed card room key employee defined

**Ms. Tellefson** said these two rules are up for discussion and possible filing today. They define the term "key employee," and then add to the definition of card room employee, key employees as well who are those whose duties involve dealing with the internal controls or management structures in card rooms that are conducting house or player-funded banking. This accompanies the card room test program for house and player-funded banking. Staff recommends filing for further discussion.

**Commissioner Herbold** asked what the term "mucker" meant in item 8A (4) where it refers to a dealer or a mucker. **Ms. Winslow** said she would research that and get back to Commissioner Herbold.

**Commissioner Herbold** also asked about 8B(1) where it says the key employee is designated as a person with general responsibility for managing the affairs of a Class E or Class A card room. She wondered about Classes B, C, and D and if there were some reason why they were excluded. **Ms. Tellefson** said she thought those were card rooms where they play cards for fees as opposed to social card games where fees aren't charged. **Ms. Cass-Healy** said that was correct.

**Chairman Ludwig** called for public comment.

**Rob Saucier**, Mars Hotel, said he thinks the idea of a key employee licensing scheme is important to his industry. They will be having some people who are going to be handling a lot of money and they are going to be putting their names on reports that people must rely upon. He thinks that having an additional licensing level will probably be good for their industry. One concern he has is that he thought he had heard earlier that the key employee must be licensed prior to employment. He wondered if that specifically applied to the key employee license. **Ms. Winslow** said that's correct. It is to apply to any employees involved in house banking, player-funded banking or PSJ's, so that was what the intent was with that. **Mr. Saucier** said his concern as a businessman was that when they try to recruit quality people from out of the area, as he has done, he needs to be able to give them a commitment as to their date of employment.

As businessmen, they need some assurance that if a person makes formal application and there is nothing negative discovered, but the Commission is still doing its investigation, that within a certain time frame -- whether

it is 30 days or some number -- that the person can go to work for them. He said it puts them in a very difficult negotiating position to not know for months whether a person can work for them. **Ms. Cass-Healy** said the staff is looking at that issue right now. They have some questions on the legality of some of the ways they would do that. She suggested that they do a little more research and discuss that with Mr. Saucier.

**Commissioner Heavey** moved to file this for further discussion. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

### **BINGO GIFT CERTIFICATE AND MERCHANDISE RECEIPT RULES**

Amendatory Section WAC 230-08-080 – Daily records -- Bingo  
Amendatory Section WAC 230-20-102 – Bingo prizes – Records of winners  
Amendatory Section WAC 230-20-115 – Gift Certificates – Requirements

**Ms. Tellefson** said these rules are up for possible filing today. They all have to do with bingo activities and record keeping requirements regarding prizes, alternative methods of receipting records and prizes, and accounting methods for dealing with situations where gift certificates are given away as prizes and then are never redeemed. For the most part, these are rules that the staff worked out with the industry that requested them and they assist bingo operators in operating their games in a more efficient manner. The staff recommends filing.

**Commissioner Heavey** moved to file these for further discussion. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

### **COMMENTS FROM PUBLIC OR PUBLIC OFFICIALS OR BOTH/GENERAL DISCUSSION**

#### **CARD ROOM CONTRACT**

##### **Freddie's Club, Renton**

**Ms. Winslow** said that the contract handed out earlier today is the one that was before the Commission at this time. The staff received a request from Freddie's Club to place this operation agreement on the agenda for discussion and they are asking that Freddie's Club come up and present their request following her explanation. She said the staff proposes that the agreement be amended in Section 2. Under Purpose, they ask that the agreement before them be amended to state: "This agreement is pursuant to pilot program provisions set forth in the Administrative Procedures Act, RCW 34.05." Also, under subsection (5) "Terms and Conditions" in the first paragraph where it says "conflict" they would ask that that be changed to "deviate." Lastly, under the "Remedy" section, the last sentence says the decision of the Commission shall be final and not subject to further review. They would ask that the Commission approve adding the word "administrative" in that section. Lastly, she asked that a decision be made based on this stipulation that no operations occur before the effective date of the house banking or test rule and that final approval be made by the director before any activities occur.

**Chairman Ludwig** asked what kind of final approval would the director need to do if this contract is signed by the director effective when the rule becomes effective – 30 days from now. **Ms. Winslow** said the director would be looking at a review of the internal control system for the operation verifying that the operation is in compliance with Appendix C as it gets modified. The records and reports meet the staff's requirements and that a pre-operation inspection has been performed and that they are recommending approval of the activity based on compliance with all the issues and appendices.

**Chairman Ludwig** asked if that was not done before the agreement was signed. **Ms. Winslow** said in normal cases, they would say that would be the preferred method; however, this is the first organization that has come before them and made the request. In an effort to provide some additional training to staff and working out some of the terms of the agreement, they have found that it would be beneficial to have an opportunity to work on one licensee.



**Director Bishop** said there are about three areas that still need to be worked out. To expedite things they ask that the Commission approve the contract in principal with the understanding that the director will determine when they have worked out the last few final details. He said he anticipates that they will have this situation in many of the contracts if they are going to try to expedite them. If they have material problems, they would not bring one forward.

**Commissioner Heavey** said that, assuming they would want to approve this contract as suggested, the motion just said that the director is authorized to sign the contract when he is satisfied that all of the requirements have been met as specified in the rules and regulations and the appendices. He asked if that would satisfy that.

**Director Bishop** said yes, he thought so, if the Chairman would be willing to sign before the director signed.

**Commissioner Heavey** said they would approve it subject to the director's signature. The Chairman approves it and the director would be authorized to sign it when he was satisfied.

**Director Bishop** said he thought that would take care of it, but he is not the legal person. **Mr. McCoy** said he believed that the Commission has the authority to delegate that responsibility on a case-by-case basis in this type of circumstance. As long as the delegation is clear and, given the parameters that had been discussed, that is clear.

**Commissioner Herbold** said that in the rule they just enacted with respect to the house banked card rules, Item 3 says "each new agreement shall be submitted to the Commission for review and approval prior to commencing operations." Commissioner Herbold said she understood that to be this larger operating agreement that's got all the rules about surveillance and security, and the like. She wondered if they approved Freddie's request today, at what point do they approve this contract because they have not seen Freddie's contract other than the draft that they have.

**Ms. Winslow** said Freddie's contract would be the draft that they received. She said that in her earlier presentation she mentioned the staff would be expecting additional modifications to be made approximately by the first of November to Appendix C. They have advised Freddie's Club that they will be making modifications and there may be requests for some minor modifications to his operation to comply with those changes that they make to Appendices.

**Commissioner Herbold** said that because of the timing, the staff could work that out with him, he could be operating before the next Commission meeting actually occurs, and he could kick into operation and they would not have actually seen the final contract. She pointed out that the draft had blanks in it, underlined sections, and was clearly marked "draft" and does not even have Freddie's name in it, so the Commission would not have seen that if they approve the draft today.

**Ms. Winslow** said the modifications that they expect to make only to Appendix C will be minor modifications that may allow some additional flexibility. In particular, the areas they are looking at are the ones that create additional cost as far as using outside CPA firms to prepare the internal controls and the financial statements being required. These are things that they have looked at changing all along. She said she could see no problems, but they could bring those forward at the next Commission meeting. The staff would not expect that this operation would be ready to begin more than a few days before the next Commission meeting. They plan to bring a pre-operation report to the commissioners at the next Commission meeting to advise them on how things were decided and reviewed by the director.

**Commissioner Herbold** said that if the Commission waited until the next meeting to approve Freddie's operation, it would delay him by a couple of days because an effective date of 30 days from filing of the new rule will be a couple of days before the next Commission meeting. **Director Bishop** said that staff had discussed this earlier this morning with Mr. Tull. One of the positive aspects is that if this were approved, the staff would be able to observe the activity during those two or three days before the next meeting and they could arrange for the Commission to see it before the next round of card room contracts come forward.

**Bob Tull**, attorney for Freddie's Club, introduced Fred Steiner, owner of Freddie's Club and Diamond Lil's. Both are in Renton and Mr. Steiner is a longtime licensee. He said that Mr. Steiner's willingness to be a "guinea pig" has been, as they had heard from Ms. Winslow, welcomed by the staff. They came forward a couple of months

ago to suggest that perhaps it would be useful on both sides to have someone go through this process on the timeline that had just happened. At one time, Mr. Tull was intending to ask the Commission to make the rule become effective more rapidly. After the discussion with staff, it was clear that there was not enough comfort in doing that. Mr. Tull thought that the logistics of Mr. Steiner's operation would have made more fuss and commotion than it would have been worth. They wanted to avoid making this more fuss and commotion than it is worth as well, but they thought that the circumstances and the nature of these test contracts were such that it would be a useful tool for the Commission and it would be a useful target date and opening date process for Mr. Steiner to approve the contract at this meeting today. Operations, as they discussed, would not commence until the rule had become effective, which may only be three or four days before the next Commission meeting. However, those days would be a good laboratory for both sides and they would like to arrange, if it is at all possible, for the commissioners as they travel to the Ocean Shores meeting on November 13 and 14 to either individually or under the escort of staff attempt to make a side trip to take a look. If they are open they can do that, but if not, it would have to be later on.

**Mr. Tull** said Freddie's is a brand new facility; it has been designed with the Appendix C requirements in mind; it's been modified where there have been necessary modifications; and there is a high degree of comfort on the staff's part that there are no big issues. Mr. Steiner has made it clear he will do what he is told to do. Under section six of the contract, it says, "unilateral determination of the director to ensure and maintain adequate regulatory control is a basis for amendment." That's unilateral amendment by the director. That has been the core thesis of the test approach because if a problem is evolving, they don't want to go through an emergency rule making process a month later. They don't want to have to go to court. The director simply says, "As of tomorrow we're doing it differently," and people have to comply or be dropped from the test. In the case of Mr. Steiner, no one is worrying about any type of non compliance or failure to respond to any sort of evolving procedure on the part of the staff. From a lawyer's standpoint, this is a very unique contract to have a client sign, but his clients and he understand that they are in a territory where people have to enter with their eyes open.

**Mr. Tull** said that to say that it is a matter of life and death to have Mr. Steiner open three or four days early would be an exaggeration and he said he would not make that statement. They do think under all the circumstances that it is a very reasonable request and it will provide an excellent laboratory. If he doesn't meet the requirements of staff in the coming weeks in terms of responding and supplying the information data or making changes, he won't get to open ahead of that time anyway. But it does keep everything in focus and as Ms. Winslow pointed out, it has been a good test case as far as the staff shaking down its procedures as well. He said they would ask with all possible dispatch that the Commission approve this. All these contracts place operational regulatory decision-making control in the hands of the director subject to ongoing Commission awareness and they think it is an appropriate step. They would be more than happy to help arrange tours or observations and go through aspects of this in great detail as the laboratory explanation either at or in conjunction with the next meeting.

**Chairman Ludwig** asked if Ms. Winslow's suggested amendments met his approval. **Mr. Tull** said yes.

**Commissioner Heavey** said that, according to his calculations, if the rule is filed today, the day they adopt it, Mr. Steiner could open on November 9; if the rule is filed Monday, he can open on November 13. He wondered how they would get the rule filed today. **Ms. Tellefson** said she would have to call the office, but if they had the final typing service copy of this rule with the changes that were made today, then they could go ahead and get it filed today. If they are still waiting for that, then they would probably have to file it Monday. **Commissioner Heavey** asked why the four days were important.

**Mr. Tull** said that, in the beginning, they were anticipating asking for a shortened effective date of the rules and determined that that was too much stress on the system and was not particularly feasible in terms of Mr. Steiner's timetable. Although Mr. Steiner does not hold anyone else responsible for his own working timetable over the past few weeks, he had set a target date of November 6. After the realization that the dates on the rule weren't going to reasonably adjust, they then started looking at his November 9 or 10 date and they thought it would be a worthwhile exercise. It did not put any substantial additional stress on the staff and the burden on the Commission was just the fact that they were there having that discussion. They had already made that imposition so they were hopeful that the Commission would grant this request.

**Commissioner Forrest** said the Commission would benefit as much as Mr. Steiner would in getting a few days ahead to get this program going.

**Director Bishop** said he thought if it were filed Monday, that November 12 would be the first day, although he might be incorrect.

**Chairman Ludwig** asked if it were appropriate to call for public comment. **Ms. Tellefson** said it was not necessary, but he could if he chose.

**Eric Durban**, chief financial officer of the Muckleshoot Casino, said he is concerned about the speed at which the Commission is going forward and promulgating regulations as well as implementing those even before they are fully promulgated. Nonetheless, in the spirit of cooperation, perhaps, he invited the Commission after they stop by and visit Freddie's to stop by and see their location as well, compare the two, and consider other implementation options that they may need to have in place. They are unconvinced that this is a level playing field, but nonetheless they realize things are going forward. He said his organization hopes that the Commission will take the opportunity to stop and take a look at their facilities, check out their surveillance, the requirements for gaming agents on the floor whenever they are open and see the rather tight regulations they are under. He wants them to see the advantages of having those requirements in place. **Chairman Ludwig** thanked Mr. Durban for the invitation.

**Commissioner Forrest** moved to approve the contract as amended with the authorization to the director to sign when the final details of a couple of the sections still to be worked on are worked out if they are worked out to his satisfaction and to take effect when the rule takes effect. **Commissioner Herbold** seconded the motion.

**Commissioner Herbold** wanted it on the record that, although she is voting in favor of this, it is because she knows that it is not going to happen again in terms of early implementation. This is the only one that can happen in light of the effective date of the rule, but she would hate for the Commission to establish a precedent where everybody comes in and asks for early approval. She would like to see the final contract before they approve anymore. **Chairman Ludwig** said he shares her views and suspects the others do, too.

*Vote taken; motion carried with four aye votes.*

**Chairman Ludwig** asked if the original contract was available for him to sign. **Ms. Winslow** said he had the original, which was handed to him earlier during her first presentation. **Commissioner Herbold** said that was a three-page form. The Chairman was talking about the operating contract. **Ms. Winslow** said she could get copies of Appendix B and C. **Chairman Ludwig** said he had that in draft form. He meant the original that needs to be signed by him today. **Ms. Winslow** said that was correct and he should have a copy of that. **Director Bishop** asked if the original had some handwritten notes on changes. **Ms. Winslow** said no, they would have to make the modifications that they entered into the record to the contract that Chairman Ludwig should have in front of him.

## **FAREWELL TO SHARON TOLTON, ASSISTANT DIRECTOR 1985-1997**

**Director Bishop** said he would like to recognize Ms. Sharon Tolton, past Assistant Director, who has now taken on the position of Deputy Director for the Criminal Justice Training Commission. He thanked her for all of her dedication and hard work that she has done over the years. She was instrumental in implementing and being involved in the negotiation of compacts for Class III gaming. She has done an excellent job in that area. The agency is recognized in the country as being a leader in tribal regulation with their compacts. She also pushed through the Commission's involvement in problem gaming and again the state is recognized as being a leader in that area and the Commission is very proud of that. He presented her with a plaque that has her badge on it, which they will be retiring and the plaque says: "Presented to Sharon M. Tolton in appreciation for 12 years of service to the Washington State Gambling Commission."

**Ms. Tolton** thanked everyone and said that, in the interest of time, she would just like to say goodbye. She expressed her appreciation to the Commission, both past and present, and to the staff whom she will miss a great

deal and many of the licensees whom she has come to know over the years. She said someone once said that "Success is journey and not the destination," and from the bottom of her heart she thanked them for the 12-year leg of this journey.

**Chairman Ludwig** said that "goodbye" sounded too permanent – don't say "goodbye" say "I'll see you later." He said it was the Gambling Commission's loss and a gain for law enforcement in general in the state of Washington. He wished her good luck.

## **DIRECTOR'S SALARY**

**Chairman Ludwig** said that yesterday in an executive session, they discussed a salary item. Mr. Bishop's salary had never been set at the time they made a decision and he was appointed. At last month's meeting they indicated that they would discuss it here this month and whatever they decided would be effective as of October 1, 1997, when he assumed his new position. He called for a motion.

**Commissioner Forrest** moved to establish a salary in the sum of \$7,465 per month effective October 1, 1997. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

## **STATE TASK FORCE ON GAMBLING**

**Senator Schow** reported that he and Senator Prentice met with the Governor to request that another task force on gambling be established.

## **TOURISM BROCHURE**

**Commissioner Heavey** said he was looking at some material that had been given to them from the Tourism Commission. Mr. Kaufman had requested that they remove from their brochure the announcement of illegal activity in the state of Washington. Commissioner Heavey noticed that the response from the Commission to their response was, "Well, even though it's illegal, it brings in tourists." He said he is not being facetious when he said that if the Commission does not want to remove it from their brochure then maybe they should expand their brochure to include other illegal activities in the state of Washington – dope dealing on 2<sup>nd</sup> Avenue, the high crime rates where "ladies of the night" walk up and down the streets and at SeaTac so that tourists can take advantage of it all. He said if they want these tourists to come into town, let them know all of the attractions of the state.

**Ms. Tellefson** said that since that letter, Director Bishop and she had met with the director of the Division of Tourism and discussed the issue – not only the issue of advertising illegal activities, but choosing to advertise one aspect of the gambling industry over other aspects of the gambling industry. At the conclusion of that meeting the director assured them that there would be no further solicitation for participation in gambling activities out of that office.

**Commissioner Herbold** asked if they were going to change their brochures. **Ms. Tellefson** said they would. **Commission Herbold** wondered what the director of the Tourism Commission meant in her letter when she said, "I should note that we received the listing from the Washington State Gaming Commission." **Ms. Tellefson** said what they received from the agency was a list of federally recognized tribes. There was no listing of casinos, because she brought the list to the meeting with staff. **Bishop Director** added that they were fairly certain that they got that listing from other sources.

**Commissioner Heavey** said he was offended by the brush-off and the tone of the letter.

**Chairman Ludwig** asked if there were any further business for the Commission. He said there would be a brief executive session. Public meeting adjourned at 12:20 p.m.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green  
Executive Assistant